

**REPORT - PLANNING COMMISSION MEETING**  
**June 24, 2004**

**Project Name and Number:** Hill Area General Plan Land Use Map Changes and Corresponding Rezoning (PLN2004-00030)

**Applicant:** City of Fremont

**Proposal:** Amend the General Plan land use map by refining the location of the Toe of the Hill that delineates the westerly boundary of the Hill Area and make conforming changes to the land use designations along and above the Toe of the Hill line; the rezoning of properties as follows: 1) within the Hill Area of Fremont by deleting the Development Reserve Overlay (R) district from zoning maps; 2) changing certain properties within the Hill Area from Residential (R-1-80 and R-1-160) to Hill Open Space O-S District to reflect changes in the alignment of the Toe of the Hill; 3) changing all or portions of properties located above the Toe of the Hill from Single Family Residential (R-1) and Agricultural (A) to Hill Face and Hill Open Space (O-S) districts; and 4) changing all or portions of properties located below the Toe of the Hill from Hill Face Open Space (O-S) district to Single Family Residential (R-1) or other adjoining compatible zoning district to reflect changes in the alignment of the Toe of the Hill line, to achieve conformance with the General Plan.

**Recommended Action:** Recommend to City Council

**Location:** Development Reserve Overlay -Hill Area of the General Plan; Residential to Open Space on Vargas Plateau and northerly of the mouth of Niles Canyon (see Exhibit A-2)

**Area:** Approximately 5,800 acres of privately held land within the Development Reserve Overlay; for the rezoning from residential to open space, approximately 425 acres in Niles Hills and approximately 167 acres in Vargas Plateau.

**Assessor's Parcel No(s):** Various

**Owners:** Various

**Agent of Applicant:** none

**Consultant(s):** none

**Environmental Review:** A Mitigated Negative Declaration PLN 2004-00030 has been prepared for this item.

**Existing General Plan:** Hill Face Open Space, Hill Open Space, Institutional Open Space, Private Open Space and Residential Very Low Density

**Existing Zoning:** Development Reserve Overlay (R), various single-family residential districts (R-1), Planned Districts (P), Agriculture (A) and Institutional, Private, Hill and Hill Face Open Space Districts (O-S), Thoroughfare Commercial-Historic Overlay (C-T(H)), Public Facility P-F) and Hillside Combining (H-I) Districts

**Existing Land Use:** Residential, agricultural, open space, public facility

**Public Hearing Notice:** Public hearing notification is applicable. A total of 786 notices were mailed to interested parties and to owners and occupants of property within 300 feet of the draft Toe of the Hill line on streets east of Mission Boulevard from the Union City boundary to Niles Canyon Road, then generally east of Canyon Heights Drive to its terminus, then east of streets located south of Cadencia Street to Interstate 680, continuing south to Linmore Drive and

east of Guadalupe Terrace, St. Joseph Terrace, and Ohlone College, continuing southward easterly of Linda Vista Road, Hunter Lane, Vista Del Sol, Rutherford Court, Rutherford Place, Grapevine Terrace, Napa Court, Stanford Avenue, Hidden Valley Terrace, Sentinel Drive, Saguare Terrace, Rancho Higuera Court, San Clemente Terrace and Avalon Heights Terrace to west of its intersection with Woodside Terrace, then northwesterly to south of Ocotillo Court, then west to Interstate 680, generally following it southward to Green Valley Road to east of its intersection with Scott Valley Road to the Milpitas city limits. The notices to owners and occupants were mailed on June 12, 2004. A Public Hearing Notice was delivered to The Argus on June 7, 2004 to be published by June 11, 2004.

In addition, a Notice of Preparation of a Draft Mitigated Negative Declaration was delivered to The Argus on June 7, 2004 to be published on June 11, 2004.

**Executive Summary:** Three rezoning actions are proposed to be in conformance with the General Plan as amended by the electorate through passage of Measure T, the 2002 Hill Area Initiative ("Hill Initiative") on November 5, 2002. These rezonings are required based on the Hill Initiative's definition and relocation of the Toe of the Hill (TOH). All property located east of the TOH has to be redesignated within the General Plan as Hill Area and conforming rezoning is necessary.

The first rezoning would remove the Development Reserve Overlay district. The overlay was originally established to assure city services would be available prior to residential development in the higher reaches of the hills. Until it could be demonstrated that acceptable services would be available, the minimum parcel size was set at 20 acres. The Hill Initiative, in general, modified the minimum size of new parcels within the Hill Area to be 20 acres (100 acres being the minimum size for new parcels for land annexed to City after January 1, 2002), except when clustered to meet performance standards that preserve open space lands and minimize visual and environmental impacts. Thus, the General Plan designation of Development Reserve is unnecessary, given that the minimum new parcel size is now reflected for properties above the Hill Initiative's TOH. The proposed removal of the Development Overlay zoning district is based on State law, which requires that zoning of property must be consistent with the general plan. The proposed zoning text amendments would reinforce the restrictions on building within the Hill Area to protect the view of the hills from public areas and protect the open space and low residential density character of the hills.

The second rezoning action proposes to rezone two residential districts from Residential R-1-160 (Niles hills northwesterly of the mouth of Niles Canyon) and R-1-80 (Vargas Road area) to Hill Open Space. The rezoning is required to be consistent with the initiative-amended General Plan designation to Hill Open Space. Approximately 22 parcels are affected by this action.

A third rezoning affects properties at the westerly edge of the Hill Area as designated on the General Plan. The TOH line that establishes the westerly boundary of the Hill Area has been recently redrawn to conform to the definition of that line in the Hill Initiative. The affected parcels are now within the Hill Area and need to be rezoned to Open Space, or, alternatively, are now outside of the Hill Area and need to be rezoned predominately as residential. Planned Districts will retain their zoning designations but regulations affecting properties within Planned Districts have been proposed for incorporation into the Planned District regulations section of the Fremont Municipal Code. This report suggests the Planning Commission recommend approval of a Mitigated Negative Declaration and a rezoning of the subject properties.

### **Background and Previous Actions:**

In November 1981, voters approved an initiative restricting development in the Fremont hills. The provisions of that initiative, Measure A, were incorporated into the General Plan, zoning ordinance and development policies in 1982 and in 1991 as part of comprehensive revisions to the General Plan. In November 2002, the voters of Fremont passed the Hill Area Initiative (Measure T) modifying the City's hill area policies contained in the General Plan. The 2002 Hill Initiative requires amendments to the zoning ordinance, Hill Area development policy and rezoning to be consistent with the General Plan. The required rezoning is this subject of this report. The zoning ordinance and development policy changes are the subjects of a separate report (Item 7 of this agenda).

**Project Description:** Amend the General Plan land use map by refining the location of the Toe of the Hill ("TOH") line that delineates the westerly boundary of the Hill Area and make conforming changes to the land use designations along and above the Toe of the Hill line. A corresponding rezoning of properties along and above the Toe of the Hill line is also proposed. The rezoning portion of this project: 1) deletes the Development Reserve Overlay (R) District from the zoning maps 2) reclassifies properties within the Hill Area from Single Family Residential (R-1-80 and R-1-160) to Hill Open Space (O-S); 3) rezones all or portions of properties located above the Toe of the Hill from Single Family Residential (R-1) and Agricultural (A) to Hill Face and Hill Open Space (O-S) districts and 4) rezones all or portions of properties located below the Toe of the Hill from Hill Face Open Space (O-S) district to Single Family Residential (R-1) or other adjoining compatible zoning district to reflect changes in the alignment of the Toe of the Hill line and to achieve conformance with the General Plan.

**Project Analysis:** Delineating the Toe of the Hill: Based on the 1981 Hillside Initiative (Measure A), the 1991 General Plan defined the Hill Area as the area generally easterly of a line along 680 and Mission Boulevard extending northerly to the Union City boundary with the easterly boundary line extending easterly to the City limits.

The 2002 Hill Initiative ("Hill Area Initiative") included a new definition of the Toe of the Hill (TOH) and also relocated the westerly boundary of the Hill Area to the TOH, with the Hill Area extending beyond easterly from the TOH to the City boundary line. In Measure T, the TOH is defined as "a line along the base of the hills where the **natural grade first becomes** twenty percent or more..." (emphasis added). Based on the Measure T definition and the topographic contour lines generated by the City's GIS consultant, city staff generated a proposed TOH line, and presented this proposal at a study session with the City Council on February 17, 2004. This proposed TOH line addresses the topographic complexities of the Fremont hills by adhering to a set of principles to ensure that the TOH line remains "a [single] line" as required by Measure T, as follows:

- The TOH shall be a continuous line. The slope shall be measured perpendicular to elevation contours as established from a survey of the natural topography.
- Where the first twenty percent line at the base of the hills is discontinuous, the TOH shall be drawn along the boundary of the twenty percent slope area to create a continuous line.
- Where the twenty percent line creates pockets or projections narrower than one hundred feet, the TOH line is drawn across the pocket or projection.

Note that the principles proposed above are set forth as a proposed zoning text amendment to revise the zoning text definition of Toe of the Hill (PLN2004-0029). In fact, when Measure A had been adopted in 1981, the City Council subsequently adopted principles for drawing the Measure A TOH line in a 1993 ordinance further defining the TOH. The proposed principles for establishing the Measure T TOH line would similarly be codified as a definition in the Municipal Code.

"Challenges" to the Toe of the Hill Line: Individual property owners have approached City staff to challenge the location of the TOH line in relation to their property. While still proceeding with the adoption of the proposed TOH, the Zoning Text Amendment proposes to include a provision within the TOH definition, Section 8-2199.8(4), which will allow property owners to submit information and data, prepared by a professional civil engineer or professional land surveyor, which supports their proposed relocation of the TOH line. The information and data would be submitted to the Planning Division, and subject to City review, including professional peer review. Any revision to the adopted TOH Line would be subject to a public hearing at which all interested persons will have the opportunity to review the information and participate. Furthermore, any proposed relocation must otherwise be consistent with the Hill Area Initiative of 2002, and all the ordinances and resolutions adopted to implement the initiative. If the proposed relocation of the TOH line changes the development potential of any property, not limited to the applicant's property, a General Plan Amendment and Zoning atlas amendment shall be required to implement the change. Since changes to the TOH may also impact properties surrounding the applicant's property, because revisions to the TOH line may not result in a discontinuous or "broken" line, a public hearing process is proposed for any applications for a relocation of the TOH line.

**General Plan/ Zoning Consistency:** On November 5, 2002, the voters of Fremont passed the Hill Initiative (Measure T) modifying the City's hill area policies contained in the General Plan text. The specific changes required by Measure T have been incorporated into the General Plan text by operation of law. Because the changes to the General Plan were adopted by the vote of the people, no further action is required by the Planning Commission or City Council to amend the General Plan text. However, the map contained in the Initiative that showed the Hill Area was for illustrative purposes only, and the actual Hill Area would be subsequently delineated based on the Toe of the Hill definition in Measure T. The proposed general plan land use map changes and corresponding rezonings for consideration herein were prepared using the parameters established in the Initiative. Because State law requires the zoning to be consistent with the General Plan, the Planning Commission and City Council must approve amendments to the General Plan Land Use Map and Zoning Ordinance text to bring those documents into consistency with the revised General Plan text as required by the Hill Area Initiative. This report also deals with the necessary changes needed to the Land Use zoning maps.

**General Plan Land Use Map and Zoning Map Changes:** The Hill Initiative designates all lands easterly of the redefined TOH as Hill Face Open Space or Hill Area Open Space and practically eliminated the Development Reserve Overlay general plan designation. In order to bring the general plan land use map and zoning text and map into consistency with the General Plan text, two types of actions are proposed:

- Removal of the Development Reserve Overlay District (the Development Overlay District is being deleted from the Zoning Ordinance in a separate action);
- Redesignation and rezoning to Open Space of those properties easterly of the redefined Toe of the Hill that are designated and zoned residential.

Two categories of property are affected by the redesignation and rezoning to Open Space. The first category consists of properties above the ridgeline zoned Residential (R-1-80) on the Vargas Plateau and (R-1-160) northerly of Niles Canyon. The 1969 General Plan designated pockets of very low residential development in the Niles and Mission San Jose hills; by the mid- to late 1970's those pockets were reduced to the subject areas. The Hill Initiative eliminated the residential designations and they will now have Open Space (O-S) designations. The Niles rezoning area consists of six parcels known as the Delucchi Ranch. Two of the parcels are about one acre in area, with the others ranging from 48 to 198 acres. The Vargas Plateau area consists of 16 parcels ranging from 4.75 acres to 25.7 acres with a median size of approximately 8 acres.

The second category affects properties along the easterly edge of the TOH. Properties, or portions thereof, now located above the TOH are now within the Hill Face Open Space as defined by the Hill Area Initiative, but may currently be designated and zoned residential. Under provisions of the Hill Initiative, all pre-existing legal lots of record under 20 acres and created before January 1, 2002, will become legal, nonconforming lots, even if less than the 20 acre minimum size for new parcels in the Hill Area.

**Residential Density Impacts:** The Development Reserve Overlay was established to assure that future development of the hills would be adequately served by water, sewer, and fire services and by acceptable public and private streets. Until such time that these services were found to be available by the City Council, the minimum parcel size was set at twenty acres. Under the previous General Plan, development intensity in the hills ranged from .25-1 dwelling units per acre to .5-1.5 dwelling units per acre for those areas with a residential designation. Those privately owned properties designated Hill Face Open Space or Hill Open Space could previously (prior to Measure T) be developed at:

- one dwelling unit per five acres in the Hill Face Open Space if unconstrained, with a use permit;
- one dwelling unit per ten acres in the Hill Face or Ridgeline if unconstrained, with a further increase to one dwelling per five acres if findings are made to demonstrate that impacts including visual impacts have been substantially reduced;
- one dwelling unit per twenty acres for constrained lands above the toe of the hill.
- One dwelling unit per acre for unconstrained land below the toe of the hill<sup>1</sup>;

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<sup>1, 2</sup> The 2002 Initiative moved the westerly boundary of the Hill Area to the Toe of the Hill and thereby eliminated the case of unconstrained land below the Toe of the Hill from the Hill Area.

- One dwelling unit per five acres for constrained land below the toe of the hill<sup>2</sup>

Table 3 below, taken from the City Council July 23, 2002 report on the Hill Area Initiative estimated between 605 and 2,098 dwelling units (existing and new) might be constructed if adequate services were provided and the Development Reserve was removed. Under the Hill Initiative of 2002, an estimated 285 dwelling units could now be constructed.

<b>TABLE 3: HILL AREA HOUSING DEVELOPMENT</b>					
<b>Current Designation</b>	<b>Privately Held Acres</b>	<b>Density*</b>	<b>Low Estimate</b>	<b>High Estimate</b>	<b>Initiative (1du/20ac.)</b>
Residential .5–1.5 du/acre	639	Step 1: .5 du/acre Step 3: 1.5du/acre	320 du**	959 du	32 du
Residential .25 – 1 du/acre	158	Step 1: .25 du/acre Step 3: 1 du/acre	40 du	158 du	8 du
Hill Face Open Space	2539	1 du/20 acres (constrained) 1 du/5 acres (unconstrained)	127 du	508 du	127 du
Hill Open Space	2364	1 du/20 acres (constrained) 1 du/5 acres (unconstrained)	118 du	473 du	118 du
<b>Total:</b>			<b>605 units</b>	<b>2098 units</b>	<b>285 units</b>

\*Assumes availability of services.

\*\*Dwelling units

As shown in the above table, the rezoning to comply with the General Plan shows the development scenarios that existed in the Hill Area. The November 2002 election resulted in the estimated housing development in the Hill Area decreasing. This rezoning implements the will of the electorate as expressed in the passage of the Hill Initiative of 2002.

**Other Land Use Impacts:** Besides the impacts regarding residential development, the Initiative also modified the list of other permitted uses, as more particularly described in Item 7.

**Environmental Analysis:** An Initial Study and Draft Mitigated Negative Declaration has been prepared for this project. The environmental analysis did not identify potential impacts associated with the rezoning; accordingly, a finding is proposed that this project would not have a significant effect on the environment, and a Draft Mitigated Negative Declaration has been prepared.

A more detailed analysis of the potential impacts is provided within the Initial Study for the project (included as an enclosure). The initial study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Mitigated Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

#### **Response from Agencies and Organizations:**

This project was submitted to the Alameda County Congestion Management Agency (ACCMA) for review to determine if implementation of the proposal would create an impact on the regional transportation network. No comments were received.

**Enclosures:** Informational Exhibit 1 Initial Study and Draft Mitigated Negative Declaration with accompanying fee exemption  
Informational Exhibit 2 The Hill Area Initiative of 2002 (Measure T)

<b>Exhibits:</b>	Exhibit "A"	General Plan Land Use Map Amendment
	Exhibit "B"	Rezoning to rescind the Development Reserve Overlay District Rezoning of Niles Canyon hillside from R-1-160 to Hill Open Space Rezoning of Vargas Plateau properties from R-1-80 to Hill Open Space Rezoning of properties along the boundary of the Hill Area above the TOH to Hill Face Open Space and properties below the TOH to the appropriate adjoining land use designation and zoning classification

**Recommended Actions:**

1. Hold public hearing.
2. Recommend the City Council find the initial study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Recommend the City Council approve draft Mitigated Negative Declaration with accompanying certificate of fee exemption and find it reflects the independent judgement of the City of Fremont.
4. Find PLN2004-00030 General Plan Land Use Map Amendment (Exhibit A), is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan as enumerated within the staff report and as referenced in the Hillside Initiative of 2002 (Appendix 2).
5. Recommend to Council approve PLN2004-00030 to amend the General Plan land use designations for properties along and above the Toe of the Hill line in conformance with Exhibit "A" (General Plan land Use Map Amendment)
6. Find PLN2004-00030 Rezoning is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the Land Use chapter and General Plan map amendments enacted by the passage of Measure T (the Hill Area Initiative of 2002) on November 5, 2002.
7. Recommend PLN 2004-00030 to the City Council in conformance with Exhibit "B" (Rezoning Exhibits)